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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7328 OF 2006

Mohamed Vakil Mohamed

Issaq & Ors. Petitioners.

vs.

The Board of Trustees of the

Port of Bombay. Respondents.

Mr. C.N. Chavan for petitioners.

Mr. M.P.S. Rao with Mr. N.H. Munjee i/by

Mulla & Mulla & CBC for Respondents.

CORAM : A.P. DESHPANDE, J.

DATE : 8th November, 2006.

P.C.

. Rule. Rule made returnable forthwith.
Taken up for final hearing by consent of the parties.

2. The petitioners are in occupation of premises owned by the respondent Board of Trustees of the Port of Bombay. The respondent initiated proceedings for eviction of the petitioners under the provisions of Public Premises Eviction of Unauthorised Occupants Act, 1971 on 29.4.2005. The

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petitioners filed the written statement and thereafter issues came to be framed. The respondent after filing an affidavit for examination-in-chief made its witness available for cross-examination by the present petitioners. The matter was fixed for cross-examination on 25.7.2006 but the petitioners sought an adjournment and on 13.8.2006 last chance was granted by the Estate Officer. As the petitioners could not proceed to resume the cross-examination of the witness of the respondent, the impugned order came to be passed by the Estate Officer declining right of cross-examination to the petitioners and by an order dated 6.10.2006 has closed the evidence of the petitioner and posted the matter for arguments which is now scheduled on 14.11.2006.

3. In the above fact situation, the learned counsel for the petitioners submits that the petitioners had sufficient cause not to proceed with the cross-examination on the date on which the matter was fixed for the same. He submits that denying a right to cross-examine and a further denial of a right to lead evidence is bound to result in failure of justice and with a view to avoid miscarriage of justice, it is urged that this Court should afford one more opportunity to the petitioners to participate in the proceedings on the file of the Estate Officer. The learned counsel for

the petitioners volunteers and undertakes not to seek a single adjournment hereinafter and cooperate in expeditious disposal of the matter. He further states that the respondent can be adequately compensated by payment of costs. To sum up, the submission is that this Court's intervention in the matter is very much called for with a view to avoid the miscarriage of justice.

4. The learned counsel for the respondent has tried to support the orders passed by the Estate Officer.

5. Having regard to the totality of the facts and circumstances, in my opinion, ends of justice would be met by permitting the petitioners to participate in the proceedings on the file of the Estate Officer so as to have a decision on the merits of the matter. With a view to meet the ends of justice, the present petition has to be allowed and I proceed to allow the same.

6. The impugned orders passed by the Estate Officer dated 30-8-2006 and 6-10-2006 are quashed and set aside. The Estate Officer is directed to permit the petitioners to cross-examine the witness of the respondent. The petitioners shall also be permitted to lead the evidence. This order is subject to the undertaking given by the learned

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counsel for the petitioners that no further adjournment will be sought in the matter and it is further subject to the payment of costs of Rs. 10,000/- by the petitioners to the respondent. The payment of costs will be made within a period of two weeks from today. The parties to appear before the Estate Officer on 14.11.2006.

7. Rule is made absolute in the above terms.

(A.P. Deshpande, J.)